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IRMA C. EDMONDS

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:

MARIANNE JANE MILLER,

Debtor.

NO: 12-40761-D-7

DC No.: SLF 4

**MOTION FOR AUTHORIZATION TO
SELL PROPERTY AT PUBLIC
AUCTION AND TO COMPENSATE
AUCTIONEER**

Date: May 8, 2013

Time: 10:00 a.m.

**Place: Department D
Honorable Robert S. Bardwil**

Chapter 7 Trustee Irma C. Edmonds respectfully moves for authorization to sell personal property of the estate at public auction. The Trustee believes the proposed sale of the personal property is in the best interests of the creditors and this Court should approve it pursuant to Bankruptcy Code Section 363(b).

The Trustee represents the following:

INTRODUCTION

1. On November 30, 2012, the Debtor filed this case. Irma C. Edmonds is the Chapter 7 Trustee.

MOTION FOR AUTHORIZATION TO SELL THE
ESTATE'S INTEREST IN PROPERTY AT PUBLIC
AUCTION AND TO COMPENSATE AUCTIONEER

1 2. In her schedules, the Debtor disclosed the following:

2 (i) "Stonebridge Life Insurance, term life insurance, face value \$5000;
3 Deceased husband's policy. Proceeds not yet received." She scheduled this item with a value of
4 \$5000 and exempted \$5000 under California Code of Civil Procedure Section 703.140(b)(7);

5 (ii) "Presidential Life Insurance, term life insurance, face value \$10,000;
6 Deceased husband's policy. Proceeds not yet received." She scheduled this item with a value of
7 \$10,000 and exempted \$10,000 under Section 703.140(b)(7)
8 (collectively, the "Insurance"); and

9 (iii) "5 yogurt machines used in business." She scheduled this item with a
10 value of \$10,000 and exempted \$3673.54, \$2200 under Section 703.140(b)(6) and \$470.19
11 under Section 703.140(b)(5) (the "Yogurt Machines").

12 3. The Trustee disputes the Debtor's exemptions in the Insurance and entered
13 into a proposed settlement agreement with the Debtor pursuant to which the Debtor agreed to
14 (i) pay the bankruptcy estate \$5000 and (ii) immediately turnover the Yogurt Machines to the
15 Trustee. In addition, within five days of the Bankruptcy Court's entry of an order approving the
16 Trustee's motion to compromise, the Debtor shall file an amended Schedule C in which she
17 shall (i) remove all exemptions in the Yogurt Machines and (ii) remove \$5000 of the exemption
18 claims in the Insurance. (Edmonds Decl., ¶ 2).

19 4. The Trustee is filing the motion to compromise concurrently with this
20 application. If approved, the Debtor agreed to amend her schedules to remove the exemption in
21 the Yogurt Machines. (Edmonds Decl., ¶ 3).

22 5. The Debtor did not schedule any liens or encumbrances against the Yogurt
23 Machines and the Trustee is unaware of any liens or encumbrances against them. (Edmonds
24 Decl., ¶ 4).

25 **SALE OF THE PROPERTY AT PUBLIC AUCTION**

26 6. The Trustee believes, based on her knowledge and on the evaluation of the
Yogurt Machines by Huisman Auctions, Inc. ("Huisman"), that there is equity in the Yogurt

1 Machines and a sale of the Yogurt Machines at public auction is the best method of liquidating
2 them for the benefit of the estate. (Edmonds Decl., ¶ 5).

3 7. The Trustee is concurrently filing an application to employ Huisman as
4 auctioneer to sell the property at public auction.

5 8. The Trustee believes that by using an auction process, the Yogurt
6 Machines will be exposed to a large number of prospective purchasers and, for that reason, will
7 likely be sold for the best possible price. Huisman engages in extensive advertising, including
8 highway billboards, and newspaper advertising, and it mails advertising brochures to its
9 subscriber list of approximately 6000 people. (Edmonds Decl., ¶ 6).

10 9. If the Court approves this Motion, the Trustee intends to sell the Yogurt
11 Machines at an online auction to be conducted at Huisman's website,
12 www.huismanauction.com. The Yogurt Machines will be sold on an "AS IS" basis without any
13 warranty. Interested parties may submit their bids between May 14 and May 20, 2013.
14 Interested persons may inspect the Yogurt Machines on weekdays between 9:00 a.m. and
15 4:00 p.m. by appointment with Huisman. Information regarding the sale or subsequent sale
16 dates, if any, may be obtained by telephoning Huisman, at (209) 745-4390. (Edmonds Decl.,
17 ¶ 7).

18 10. The Trustee intends to accept the highest reasonable bids. If, in the
19 exercise of the Trustee's business judgment, no reasonable bids are received, the Yogurt
20 Machines may be held for subsequent auction or private sale without additional notice.
(Edmonds Decl., ¶ 8).

21 11. The Trustee believes the sale of the Yogurt Machines at a public auction is
22 in the best interests of the creditors because it is likely to obtain the best possible price and
23 should be approved by the Court under Bankruptcy Code Section 363. (Edmonds Decl., ¶ 9).

24 **AUCTIONEER COMPENSATION**

25 12. As is noted in the accompanying application to employ Huisman, the
26 Trustee requests authorization to pay Huisman a 12 percent commission and to reimburse

1 Huisman for reasonable expenses up to \$500.00 incurred in preparing the Yogurt Machines for
2 sale, including out of pocket expenses for transportation and storage of the Yogurt Machines.
3 Also, successful buyers who pay by credit card will pay an online credit card processing fee of
4 3 percent. (Cash payments will not be subject to this processing fee.) The Trustee believes that
5 this is a customary practice for the auction sale of personal property and one that encourages
6 the use of auction professionals to assist with bankruptcy sales of property. Following the sale,
7 the Trustee will file a report of the sale with the Court. (Edmonds Decl., ¶ 10).

8 CONCLUSION

9 The Trustee respectfully requests that the Court authorize the sale of the Yogurt
10 Machines at public auction on the terms and conditions set forth in this Motion, approve the
11 compensation of the auctioneer on the terms and conditions set forth in this Motion (12 percent
12 seller's commission, reimbursement of reasonable expenses up to \$500.00, and 3 percent
13 buyer's fee for successful buyers who pay by credit card), and that it grant such other and
14 further relief as is appropriate.

15 Dated: April 3, 2013

THE SUNTAG LAW FIRM
A Professional Corporation

16 By: /s/ Dana A. Suntag
17 DANA A. SUNTAG
18 Attorneys for Chapter 7 Trustee
19 IRMA C. EDMONDS
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